

Claimant was injured at work on March 31, 1997, when he attempted to lift one side of a 1,000-pound table. Claimant immediately felt pain from his neck down into his right arm and hand. Claimant reported his injury to his employer and received treatment from Dr. Richard Piazza. Dr. Piazza scheduled an appointment for claimant to be seen by an

orthopedic surgeon, but claimant failed to keep that appointment. Instead, claimant moved to California to live with his mother because he was unable to pay his rent in Wichita, Kansas.

While in California, claimant attempted a job as a cement laborer. He worked two six-hour days washing tools and doing finishing work. However, his arm and neck hurt so bad that he quit working and returned to Wichita to seek medical treatment.

Claimant initially saw orthopedic surgeon Tyrone D. Artz, M.D., who, based upon an MRI evaluation, recommended a cervical steroid epidural block. When this course of treatment failed to improve claimant's symptoms, he was referred to Dr. Trimble who ultimately recommended surgery.

Respondent does not contest the compensability of the March 31, 1997, accident. Respondent has stipulated that claimant met with personal injury by accident arising out of and in the course of his employment on March 31, 1997. Before claimant left Wichita for California he had been released to light-duty work by Dr. Piazza. However, Dr. Piazza also provided claimant with an orthopedic referral. Claimant did not keep that appointment with the orthopedist but instead moved to California where he attempted work as a cement laborer. Respondent points to that job as a cement laborer which claimant performed for two days as the source of the increased pain and discomfort which persuaded claimant to return to Wichita and resume medical treatment. Respondent argues that claimant's neck and shoulder strain was aggravated by his work duties as a cement laborer and that claimant's present need for surgery is the result of the subsequent, intervening trauma claimant sustained working as a cement laborer in California.

The medical records offered as exhibits to the preliminary hearing transcript are silent as to any subsequent, intervening injury. It does not appear that claimant gave Dr. Artz a history of any aggravation after his initial March 31, 1997, accident. When questioned at the preliminary hearing, claimant denied suffering any subsequent injury, admitting only that the cement laborer job made the pain in his neck, arm, and hand hurt worse. He realized after working those two days that he could not put off getting medical treatment any longer.

The Appeals Board finds that the injury for which claimant was seeking medical treatment at the October 16, 1997, preliminary hearing was the direct and natural result of his March 31, 1997, accident. The work claimant performed as a cement laborer temporarily aggravated his symptoms but does not constitute a separate and distinct injury. Therefore, the Appeals Board finds from the evidence presented that there has not been a subsequent, intervening injury. The condition for which claimant seeks treatment arose out of and in the course of his employment with respondent.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order entered by Administrative Law Judge Jon L. Frobish dated October 16, 1997, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of February 1998.

BOARD MEMBER

c: Thomas M. Warner, Jr., Wichita, KS
Edward D. Heath, Jr., Wichita, KS
Jon L. Frobish, Administrative Law Judge
Philip S. Harness, Director